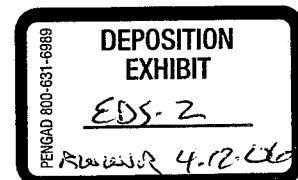


Affidavit of Laurence V. Cronin

Exhibit U

TRANSCRIPT OF TAPE OF
DIVISION OF UNEMPLOYMENT INSURANCE APPEAL
Hestel Lipscomb v. Electronic Data Services
Appeal Docket Number 156049

September 14, 2004 - 9:18 a.m.



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ORIGINAL

HL-007



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HL-008

1 THE APPEALS REFEREE: This is the
2 unemployment (unintelligible) appeals hearing in the
3 matter of Lipscomb and Electronic Data Service. The
4 hearing is being held September 14th, 2004, at about
5 9:18 a.m. at the Department of Labor, 4425 North
6 Market Street, Wilmington, Delaware. The docket
7 number is 156049.

8 The hearing is being held by Bettina C.
9 Ferguson, Appeals Referee.

10 Present in person today for the hearing is
11 the claimant, Hestal Lipscomb, an employer's
12 representative, Tina Henderson.

13 Testifying by telephone will be employer's
14 witness Barbara Jackson.

15 This is the employer's appeal of the
16 deputy determination dated August 4th, 2004, and a
17 timely appeal was mailed August 16. That was timely
18 because that was on a Monday.

19 And I'm going to read the findings of fact
20 that the claims deputy relied on for her determination
21 that there was no just cause to discharge the claimant
22 under the -- under unemployment insurance law.

23 The claimant filed her claim effective
24 July 11, 2004. Electronic Data Services employed her



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HL-009

1 from July 29th, '02, through July 13th, '04, and she
2 states that she was unemployed due to termination
3 after she was told she was a no-call, no-show for 14
4 days from April 29th through May 17th, '04.

5 The claimant states that she was out due
6 to surgery and supplied medical documentation to the
7 employer when she returned to work, which the employer
8 denies receiving.

9 The claimant supplied a doctor's
10 certificate advising her to be absent from April 29th
11 through May 17th, '04. Pardon me. She is not totally
12 disabled but cannot perform any other work on a
13 full-time basis.

14 In the employer's rebuttal, the employer
15 states they never received any separation information
16 request and ask that we make our decision with the
17 information available.

18 In a discharge situation, the burden of
19 proof is the employer's to show just cause. Just
20 cause (unintelligible) defined as an act of wanton and
21 willful misconduct on the part of the claimant that is
22 not in the employer's best interest or that is in
23 violation of the employee's expected standard of
24 conduct or the employee's duties.



1 side is going to go first. At the outset I'd ask you
2 to have Ms. Jackson give me the basic dates of
3 employment, rate of pay, and job title at the end of
4 Ms. Lipscomb's employment.

5 And then I have -- ask you to have
6 Ms. Jackson testify as to the reasons for discharge
7 and present any testimony or evidence that you feel
8 supports the employers contention that there was just
9 cause for discharge.

10 Now, Mrs. Lipscomb, in this kind of a
11 hearing, you have due process rights. And one of
12 those rights is that you have the right to
13 cross-examine Ms. Jackson. That means that after
14 she's testified you may ask her questions relating to
15 what she's testified about, if you have any questions.
16 Then it will be your turn to tell me your side of the
17 story.

18 When that's done, Ms. Henderson, of
19 course, you have right to cross-examine Ms. Lipscomb
20 as well.

21 Now, along the way I may have some
22 questions. I'll then let each side add whatever they
23 may have forgotten the first time around.

24 I'll then conclude the hearing. I will



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1 issue a written decision. I have 30 days to do that.
2 It is extremely unlikely that I will take that long,
3 but things do happen. And that decision is given --
4 sent out in writing, not orally, and it will be sent
5 to Hestal Lipscomb and to Electronic Data Service.
6 And if you want a separate copy, Ms. Henderson, let me
7 have a business card or something else.

8 MS. HENDERSON: That's fine. Thank you,
9 ma'am.

10 THE APPEALS REFEREE: Okay. And that
11 decision is appealable. At this point the next step
12 in the appeals process is the Unemployment Insurance
13 Appeals Board.

14 Finally, these proceedings are tape
15 recorded. What that means to you, Ms. Jackson, is a
16 couple things, also, driven by the fact that I'm on
17 speaker phone. And that is to take a breath once in a
18 while. Your representative may be trying to direct
19 you in a different way than where you are answering
20 your question. Or you may be trying to talk when
21 somebody else is trying to talk and you won't be able
22 to hear us. And for some reason, I don't know why the
23 phone works that way.

24 Since we do have someone on the phone,



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HL-013

1 everyone please wait until a person is done speaking
2 before you begin your next question.

3 Do you have any questions about the
4 procedure, Ms. Henderson?

5 MS. HENDERSON: No, ma'am.

6 THE APPEALS REFEREE: And, Ms. Lipscomb,
7 any questions about the procedure?

8 MS. LIPSCOMB: No, ma'am.

9 THE APPEALS REFEREE: Okay. Thank you
10 very much.

11 Ms. Henderson, you're up.

12 MS. HENDERSON: Yes. Ms. Jackson, what
13 we're going to do is we're going to provide the
14 background information for the record prior to
15 providing reason for separation.

16 So if you could provide the record, first
17 of all, with the claimant's rate of pay at the time of
18 her separation.

19 MS. JACKSON: Her rate of pay was
20 \$21,000.24.

21 MS. HENDERSON: And what was her hire
22 date?

23 MS. JACKSON: The hire date was 7/29/02.

24 MS. HENDERSON: And what was her job



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HL-014

1 title?

2 MS. JACKSON: Specialized support clerk.

3 MS. HENDERSON: All right. Was that full
4 time or part time?

5 MS. JACKSON: Full time.

6 MS. HENDERSON: Do you happen to know
7 what her shift was? Did her shift vary, or was it the
8 same every week?

9 MS. JACKSON: Her shift was eight on five.

10 MS. HENDERSON: Okay. 8:00 a.m. to
11 5:00 p.m.?

12 MS. JACKSON: Right.

13 MS. HENDERSON: Five days a week?

14 MS. JACKSON: Yes.

15 MS. HENDERSON: Monday to Friday?

16 MS. JACKSON: Yes.

17 MS. HENDERSON: All right. Now, what was
18 the actual last day that she performed duties for your
19 company?

20 MS. JACKSON: I'm sorry. I didn't hear
21 you.

22 MS. HENDERSON: What was the actual last
23 day that she performed duties for your company?

24 MS. JACKSON: That was 7/13/04.



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HL-015

1 MS. HENDERSON: Okay. All right. And why
2 is she no longer working for you? Did she resign her
3 position, or did you have to terminate her position?

4 MS. JACKSON: I terminated her position.

5 MS. HENDERSON: And what was the reason
6 for that termination?

7 MS. JACKSON: Due to her unexcused
8 absence.

9 MS. HENDERSON: All right. Was there a
10 particular day or sequence of days for which you're
11 alleging she had no verification for absence?

12 MS. JACKSON: Yes.

13 MS. HENDERSON: What were those days?

14 MS. JACKSON: She had indicated that she
15 was going out for surgery 4/29/04, and returned on
16 5/15/04.

17 MS. HENDERSON: All right. So the days
18 that you terminated her for, if I'm hearing you
19 correctly, would be from April 29th through and
20 including May 14th, is that correct, for the record?

21 MS. JACKSON: That's correct.

22 MS. HENDERSON: Okay. All right. Now,
23 we're going to backtrack a little bit, Ms. Jackson.
24 Now, if you can start from the beginning, I will try



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1 to guide you through so that we don't miss anything
2 important.

3 Did the claimant come to you or anyone
4 from the company prior to this requested leave of
5 absence in April to make you aware that she wanted to
6 have some days off for surgery?

7 MS. JACKSON: Yes, she did.

8 MS. HENDERSON: All right. Do you have an
9 approximate date or an exact date when she made the
10 company aware that she would be out from April 29th
11 until at some point in May?

12 MS. JACKSON: I have an approximate date.

13 MS. HENDERSON: All right. What was that
14 date she made the company aware of that request?

15 MS. JACKSON: That would have been early
16 in April.

17 MS. HENDERSON: All right. And was that
18 done verbally or in writing?

19 MS. JACKSON: It was done verbally.

20 MS. HENDERSON: All right. Were you made
21 aware ultimately verbally that the claimant desired to
22 have these days off?

23 MS. JACKSON: Yes.

24 MS. HENDERSON: All right. And did she



1 ultimately take those days off from April 29th through
2 and including May 14th?

3 MS. JACKSON: She did.

4 MS. HENDERSON: All right. Now, did she
5 ultimately return back to work?

6 MS. JACKSON: Yes.

7 MS. HENDERSON: All right. Do you have a
8 return date?

9 MS. JACKSON: Yes. 5/15/04.

10 MS. HENDERSON: All right. And did she
11 provide you with any type of a verbal or written
12 clearance to enable her to return to work on May 15th?

13 MS. JACKSON: Yes.

14 MS. HENDERSON: All right. Let me back up
15 one moment. Prior to her going out April 29th for the
16 surgery, had she provided you with any type of either
17 short-term disability documentation or FMLA
18 documentation?

19 MS. JACKSON: No.

20 MS. HENDERSON: Okay. So she returned to
21 work on May 15th, and you had received clearance from
22 her physician that she's able to return to work?

23 MS. JACKSON: Yes.

24 MS. HENDERSON: As of that date had you



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HL-018

1 still received or had you received as by that date,
2 May 15th, any short-term disability or FMLA
3 documentation from the claimant?

4 MS. JACKSON: No.

5 MS. HENDERSON: All right. So she -- does
6 she start to perform duties on or about May 15th?

7 MS. JACKSON: Yes.

8 MS. HENDERSON: All right. What happens
9 after that?

10 MS. JACKSON: Well, in June the 2nd of
11 '04, I received notification by CIGNA that the
12 employee's request for short-term disability was
13 denied due to failure to provide medical information
14 to support her time off from work.

15 MS. HENDERSON: All right. Now, let me
16 stop you for one moment. To the best of your
17 knowledge, was this information provided by you to
18 (unintelligible) UC Express who faxed that information
19 to the referee for this particular hearing?

20 THE APPEALS REFEREE: We're here. It's
21 not -- it's not relevant.

22 MS. HENDERSON: Okay.

23 THE APPEALS REFEREE: We're here.
24 Otherwise we would be here on a different section.



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1 MS. HENDERSON: Will do. Okay.

2 All right. So you received the denial for
3 the short-term disability on June 2nd, correct?

4 MS. JACKSON: Correct.

5 MS. HENDERSON: All right. What if
6 anything did you do at that point, once you received
7 that denial for the short-term disability?

8 MS. JACKSON: I did nothing.

9 MS. HENDERSON: Okay. All right. Does
10 the claimant continue to perform duties?

11 MS. JACKSON: Yes.

12 MS. HENDERSON: All right. Continue.

13 MS. JACKSON: On June the 17th, I received
14 a copy of a letter sent by CIGNA to Hestal notifying
15 her that her request for family and medical leave,
16 known as FMLA, was denied as they did not receive a
17 completed medical certification within the required
18 time.

19 MS. HENDERSON: All right. Now, once
20 again, did you do -- what if anything did you do after
21 you received this particular denial for the FMLA?

22 MS. JACKSON: I did nothing.

23 MS. HENDERSON: Okay. Was there a moment
24 or a date after June 17th where you spoke with Hestal



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1 about either or both of these denials?

2 MS. JACKSON: Yes.

3 MS. HENDERSON: When was that first
4 meeting.

5 MS. JACKSON: Yes.

6 MS. HENDERSON: When --

7 MS. JACKSON: It was June 30th of '04.

8 MS. HENDERSON: All right. And if you can
9 explain to the referee, what was the content of that
10 conversation between you and the claimant on June
11 30th?

12 MS. JACKSON: I met with Hestal and
13 Hestal's immediate supervisor, Tracy Eadie, to advise
14 her of the importance of complying with CIGNA's
15 request. I advised her to contact her doctor
16 immediately and also to make contact with CIGNA to let
17 them know she was working on obtaining the
18 information. Hestal indicated that she would follow
19 up with the doctor's office and CIGNA.

20 MS. HENDERSON: All right. So that was
21 the end of your conversation with her on June 30th,
22 correct?

23 MS. JACKSON: Correct.

24 MS. HENDERSON: Did you ultimately have



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1 any other conversations with her in the following
2 days?

3 MS. JACKSON: Yes.

4 MS. HENDERSON: All right. When was the
5 next conversation that you had with the claimant
6 regarding the required documentation for either or
7 both of these leaves?

8 MS. JACKSON: It was the following day,
9 which was July the 1st of '04.

10 MS. HENDERSON: And what was the content
11 of that meeting between yourself and the claimant.

12 MS. JACKSON: I went to see Hestal myself
13 to ask her if she was able to reach her doctor and the
14 representative from CIGNA. She said she was unable to
15 reach her doctor. I stressed the importance of
16 providing the medical documentation and suggested that
17 she use one of the conference rooms to make the
18 contact and have her doctor fax the information to her
19 in EDS so she could intercept the paperwork and fax it
20 to CIGNA herself. She said she would follow up.

21 MS. HENDERSON: Okay. All right. And did
22 you provide her with a secure room and secure fax in
23 order to do that on July 1.

24 MS. JACKSON: I gave her the option of



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1 using one of the conference rooms.

2 MS. HENDERSON: So did you ultimately have
3 any other conversations or follow up with the
4 claimant, once again, regarding this required
5 documentation for either or both leaves after July 1?

6 MS. JACKSON: I did.

7 MS. HENDERSON: When was the next time you
8 spoke with her?

9 MS. JACKSON: It was the following day,
10 July the 2nd of '04. I followed up with Hestal a
11 third time. She indicated that the doctor said it
12 would be faxed. I urged her to follow up with CIGNA
13 to be sure that they received it.

14 MS. HENDERSON: All right. And what was
15 the ultimate -- what was the end of the conversation
16 on July 2nd as you knew it? What was the status of
17 the required documentation?

18 MS. JACKSON: That they still had not
19 received it.

20 MS. HENDERSON: Okay. All right. After
21 July 2nd, did you ultimately have any other
22 conversations with the claimant regarding this
23 documentation?

24 MS. JACKSON: I did not.



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1 MS. HENDERSON: All right. Did you have
2 any conversations with the claimant on or about
3 July 6th?

4 MS. JACKSON: On July the 6th, no, I do
5 not believe I did.

6 MS. HENDERSON: All right. Did you have
7 any conversations with --

8 THE APPEALS REFEREE: You're leading, you
9 know. She's already said she doesn't have any more.
10 If she remembers one later, you want to ask her, are
11 you sure? (Unintelligible)

12 MS. HENDERSON: Absolutely.

13 Ms. Jackson, if you just take one moment
14 and just confer with your records, perhaps I have the
15 incorrect date. Let me rephrase the question.

16 Did you have any other conversations with
17 the claimant after July 2nd, but before her last day
18 of July 13th regarding the required paperwork?

19 MS. JACKSON: Not with the claimant, no.

20 MS. HENDERSON: Okay. Did you sit down
21 and confer with anyone other than the claimant prior
22 to separating the claimant with regard to this issue?

23 MS. JACKSON: Yes.

24 MS. HENDERSON: Who did you meet with?



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1 MS. JACKSON: On July the 6th, I had a
2 conversation with CIGNA with regards to the paperwork
3 they had been waiting for to see if, in fact, they had
4 received any of the paperwork from Hestal. And they
5 confirmed on that date that no paperwork had been
6 received.

7 MS. HENDERSON: All right. So ultimately,
8 these -- these two requests, the short-term disability
9 and FMLA, do they have any type of deadlines
10 associated with them?

11 MS. JACKSON: They did. They both had
12 indicated in their paperwork and notification to
13 Hestal that she had 15 days in which to supply the
14 paperwork --

15 MS. HENDERSON: Okay.

16 MS. JACKSON: -- for an appeal process.

17 MS. HENDERSON: All right. So, as of this
18 date, as of July 5th, had those appeal deadlines
19 expired?

20 MS. JACKSON: They had.

21 MS. HENDERSON: Did you ultimately have to
22 confer with anyone from your -- from your firm to
23 determine what -- what you would be doing as far as
24 Ms. Lipscomb's future employment?



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1 MS. JACKSON: Yes.

2 MS. HENDERSON: All right.

3 MS. JACKSON: I had a conversation with
4 our human relations department.

5 MS. HENDERSON: All right. And ultimately
6 did you sit down with human resources and the
7 claimant --

8 MS. JACKSON: No.

9 MS. HENDERSON: -- with regard to her
10 future employment?

11 MS. JACKSON: No.

12 MS. HENDERSON: Okay. How was the
13 claimant informed that she was terminated?

14 MS. JACKSON: I had a meeting with Hestal
15 on the very last date of her employment which was July
16 the 13th of '04, along with the account manager from
17 EDS, Lance Rodgers, and we had indicated to Hestal the
18 reasoning for her termination.

19 MS. HENDERSON: And do you recall what you
20 told her at that time.

21 MS. JACKSON: Yes.

22 MS. HENDERSON: What (unintelligible).

23 MS. JACKSON: That it was as a result of
24 an unexcused absence for these 14 days that she was



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1 out.

2 MS. HENDERSON: Okay. All right. Did the
3 claimant have any response to the best of your memory?

4 MS. JACKSON: Yes. She asked why, and
5 again, we had reiterated the fact that she had not
6 supplied the necessary documentation for it -- to make
7 it an excused absence.

8 MS. HENDERSON: All right. Now, had the
9 claimant either provided the necessary documentation,
10 whether it be for the short-term disability or FMLA,
11 either to verify the leave and/or -- well, let me
12 rephrase the question.

13 Had the claimant provided the proper
14 documentation as you requested multiple times, would
15 she have permitted to remain employed by your firm?

16 MS. JACKSON: Yes.

17 MS. HENDERSON: All right. I have nothing
18 further for Ms. Jackson at this time.

19 THE APPEALS REFEREE: Okay. I have a
20 couple before we get to the cross-examine.

21 Ms. Jackson, just for the record, what's
22 your job title?

23 MS. JACKSON: I'm the claim operations
24 manager.



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HL-027

1 THE APPEALS REFEREE: Prior to the
2 claimant going out for the op -- form her surgery, was
3 she told about the need to supply documentation?

4 MS. JACKSON: Yes, ma'am, she was.

5 THE APPEALS REFEREE: Who told her?

6 MS. JACKSON: We have a process. Once the
7 employee notifies that they are having a procedure
8 done, we then go ahead and we report it to our vendor
9 so that the short-term disability paperwork can begin
10 and also any possibility for the FMLA. At that time
11 the employee is sent a packet by the vendor that she
12 needs to take to her doctor for completion in
13 preparation for those days of being absent.

14 THE APPEALS REFEREE: Okay. And what
15 consequences is a person told will result if they
16 don't do this?

17 MS. JACKSON: I -- they are not -- we
18 don't have a conversation with them in advance about
19 the consequences.

20 THE APPEALS REFEREE: Okay. Subsequent to
21 the claimant coming back to work after the surgery,
22 did you have any times when you told her that her job
23 was depending on her producing the documentation?

24 MS. JACKSON: I had no way of knowing that



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1 the documentation had not been provided until we
2 received notification from the vendor.

3 THE APPEALS REFEREE: Okay. And at that
4 point did you tell the claimant that her job depended
5 on her supplying documentation?

6 MS. JACKSON: No.

7 THE APPEALS REFEREE: Okay. Hold on just
8 a second.

9 Did the claimant provide you any kind of
10 documentation separate from what she would have
11 provided CIGNA? Did she supply you with any
12 documentation that she had, in fact, been in surgery?

13 MS. JACKSON: No.

14 THE APPEALS REFEREE: Okay. Did you ever
15 ask her for any documentation personally?

16 MS. JACKSON: No, ma'am. We do not ask
17 for that documentation. That's handled by the vendor.

18 THE APPEALS REFEREE: Okay.

19 Okay. All right. Ms. Lipscomb, this is
20 your opportunity to cross-examine if you have
21 questions. I don't want your testimony yet. I just
22 want any questions that you have.

23 MS. LIPSCOMB: I don't know where to
24 begin.



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1 When I -- Ms. Jackson, when I returned to
2 work on 5/17, did I supply you all with a note from
3 the doctor stating that I was released to come back to
4 work?

5 MS. JACKSON: Yes, you did.

6 MS. LIPSCOMB: Before the surgery, were
7 you aware that Tracy Eadie asked me to supply her with
8 a note from the hospital stating what day I was
9 supposed to go off to surgery?

10 MS. JACKSON: No, I am not.

11 MS. LIPSCOMB: I think that's pretty much
12 all.

13 THE APPEALS REFEREE: Okay.

14 MS. LIPSCOMB: I don't have anything,
15 ma'am.

16 THE APPEALS REFEREE: Okay. Okay.
17 Redirect?

18 MS. HENDERSON: No, ma'am.

19 THE APPEALS REFEREE: Okay. Ms. Lipscomb,
20 it's your turn to tell me your side of what they said.

21 MS. LIPSCOMB: Okay. I had to go out for
22 surgery on May 29.

23 THE APPEALS REFEREE: May?

24 MS. LIPSCOMB: I mean -- sorry. Excuse



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1 me. Correction. April 29th of 2004.

2 I informed my supervisor and my team
3 leader that this had to be done. My supervisor then
4 in turn asked me, could I have something faxed over to
5 EDS stating what day that I was going out for surgery,
6 and basically they wanted to know how long I was going
7 to be out and everything, but that couldn't be
8 determined until after the procedure was done, which I
9 did, which I have the fax.

10 THE APPEALS REFEREE: Do you have a copy
11 of fax that you had sent?

12 MS. LIPSCOMB: Yes. Yes.

13 (Unintelligible)

14 THE APPEALS REFEREE: This is all one
15 piece.

16 MS. LIPSCOMB: That's the confirmation and
17 the cover sheet, and that's the actual letter that I
18 gave to Tracy Eadie stating when -- the day I was
19 supposed to go out for the surgery.

20 THE APPEALS REFEREE: Let me show this to
21 Ms. Henderson.

22 Ms. Henderson, take look at that document
23 and let me know if you have any objection to it being
24 made a part of the record in this case. It's three



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1 pages, has a cover sheet. It looks like a message and
2 the transmittal -- transmission form is attached.

3 Any objection?

4 MS. HENDERSON: Well, yes. I would have
5 one objection. Obviously, Ms. Jackson would have to
6 be able to somehow verify, first of all, the fax
7 number on this cover sheet. I wouldn't be able to
8 verify that.

9 THE APPEALS REFEREE: Okay. You may --
10 you may ask her that question. But read her the
11 number and ask her if that's a proper fax number.

12 MS. HENDERSON: Now, bear with me,
13 Referee. This is a different type of a confirmation
14 sheet. I'm guessing that -- is that --

15 THE APPEALS REFEREE: Let me take a look.

16 MS. HENDERSON: -- the receipt? I've
17 never seen one look like that.

18 THE APPEALS REFEREE: Well, the other
19 problem I have with this document as I look at it is
20 the two pages that are attached to the confirmation
21 don't show the fax information.

22 MS. HENDERSON: Correct.

23 THE APPEALS REFEREE: (Unintelligible)
24 always show fax -- do you know why it doesn't have



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1 that fax information at the top?

2 MS. LIPSCOMB: No, I don't, ma'am.

3 THE APPEALS REFEREE: No.

4 (Unintelligible)

5 MS. LIPSCOMB: Actually -- actually this
6 stuff, this paperwork is actually I went to the
7 hospital and got out of -- had them give me
8 documentations out of my chart cause -- you know, to
9 show that this letter was -- being certain things were
10 faxed over. So that actually is not -- it was the
11 actual paper that was sent through the machine. It
12 wasn't -- the actual fax part was given to the
13 supervisor.

14 MS. HENDERSON: Right. But there's --
15 there's no way to authenticate that those pages from
16 the physician, the two pages at issue, that they ever
17 went through. All that we could tell possibly would
18 be that the confirmation sheet went through.

19 So I would have an authentication
20 objection, obviously, since the employer has already
21 testified that they were not in receipt.

22 THE APPEALS REFEREE: Well, but there's --

23 MS. LIPSCOMB: Well, I have --

24 THE APPEALS REFEREE: Well, there's been



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HL-033

1 no testimony that it was sent to Ms. Jackson.

2 I'm going on admit it. Your objection
3 goes to weight, what weight I'm going to give it. I'm
4 going to admit it as Claimant's Number 1, mindful of
5 concerns, and we'll have an opportunity in
6 deliberating to take a look at the document more
7 closely.

8 All right. Go ahead, Ms. Lipscomb. Did
9 you have any other documentation (unintelligible)?

10 MS. LIPSCOMB: (Unintelligible) this
11 probably maybe would help go with that --

12 THE APPEALS REFEREE: What is it?

13 MS. LIPSCOMB: Because this is --

14 THE APPEALS REFEREE: Let's see it.

15 MS. LIPSCOMB: Pretty much --

16 THE APPEALS REFEREE: Just tell me what it
17 is.

18 MS. LIPSCOMB: I called in to the
19 hospital. They made notes into my chart stating that
20 I called, and it says --

21 THE APPEALS REFEREE: What is that?

22 MS. LIPSCOMB: So that I --

23 THE APPEALS REFEREE: What is the piece of
24 paper?



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HL-034

1 MS. LIPSCOMB: Oh, I'm sorry. It's a -- a
2 chart note out of my -- actually --

3 THE APPEALS REFEREE: It looks like an
4 e-mail from here. So I'm asking, what is it? Is it
5 an e-mail?

6 MS. LIPSCOMB: Oh, no, ma'am. It's a --
7 this is their print-out on -- from the doctor's
8 office. You know, it's just showing that I was having
9 surgery on 4/29, and I called and asked for a letter
10 to be faxed.

11 THE APPEALS REFEREE: (Unintelligible) who
12 wrote me the note?

13 MS. LIPSCOMB: This note was signed by
14 (unintelligible) it's an RN nurse.

15 THE APPEALS REFEREE: How did you get a
16 copy of it?

17 MS. LIPSCOMB: I requested the information
18 from the hospital.

19 THE APPEALS REFEREE: Okay. Show it to --
20 to Ms. Henderson.

21 Ms. Henderson, any objection to that
22 document?

23 MS. HENDERSON: Yeah. I would also have
24 an objection also with regard to the fact that



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HL-035

1 Ms. Jackson has been or is testifying by phone.

2 Obviously. She is not --

3 THE APPEALS REFEREE: That's not --

4 MS. HENDERSON: Okay.

5 THE APPEALS REFEREE: She could have been
6 here.

7 Certainly you could describe it to her. I
8 could describe it to her. But she's not the one makes
9 objection. You are.

10 MS. HENDERSON: All right. Ma'am, if you
11 could just -- this letter is -- what is this letter
12 again? What is -- what is this?

13 MS. LIPSCOMB: Basically when I -- when
14 Tracy said something to me about me going out for
15 surgery, she asked me, could I supply them with a
16 letter stating what day I would be going out for
17 surgery and how long I would be out in time or date or
18 something like. I called to the physician's office
19 which they, in turn, put into my chart that I called
20 them on that day, which is dated up underneath it and
21 requested the information to be faxed over to EDS.

22 (Unintelligible).

23 MS. LIPSCOMB: The lower portion of it --

24 THE APPEALS REFEREE: Okay.



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HL-036

1 MS. LIPSCOMB: It has --

2 THE APPEALS REFEREE: Okay.

3 MS. LIPSCOMB: -- the date --

4 THE APPEALS REFEREE: Okay.

5 MS. LIPSCOMB: -- that it was actually
6 faxed.

7 MS. HENDERSON: So I would -- yeah --
8 obviously have authentication and hearsay as well to
9 this, and foundation, so...

10 THE APPEALS REFEREE: Yeah. Okay. I
11 think -- what it looks like is that you request the
12 letter April 13th and then called again on the 19th
13 and didn't get it and this fax is the 19th.

14 So your objection goes to weight.
15 Generally we can't rely on -- I cannot rely on
16 hearsay, but I can at least look at it and see if it's
17 substantiated by something else. So I'm going to
18 admit it. I'm not quite sure what it does, but we'll
19 find out.

20 I'm going to mark that as Claimant's
21 Exhibit Number 2.

22 What else do you have, Ms. Lipscomb?

23 MS. LIPSCOMB: Okay, ma'am. I was out
24 for -- I was out for the two weeks from April 29th



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HL-037

1 to -- it was actually 5/17 when I returned to work. I
2 presented them this note right here which basically
3 everything I got I went to the hospital and I got
4 copies of everything that I was -- I had. Okay?

5 THE APPEALS REFEREE: Let me show this --
6 hold on.

7 MS. LIPSCOMB: Okay.

8 THE APPEALS REFEREE: Let me show to
9 Ms. Henderson.

10 Ms. Henderson, any objection to that? I
11 think that might be the note that's already been
12 testified to by Ms. Jackson.

13 MS. HENDERSON: I will object to it
14 based -- once again, based on authentication and
15 hearsay.

16 THE APPEALS REFEREE: (Unintelligible).

17 MS. HENDERSON: But, you know, again I
18 would have to ask Ms. Jackson.

19 THE APPEALS REFEREE: I would say that
20 your witness already opened the door to this document.

21 MS. HENDERSON: If that is, in fact,
22 (unintelligible). It sounds like it may be, but
23 without having Ms. Jackson --

24 THE APPEALS REFEREE: Ms. Jackson, do you



1 have a copy of the return to work note that you
2 testified about?

3 MS. JACKSON: Yes, I do.

4 THE APPEALS REFEREE: And is it dated
5 5/10/04 and then says, Lipscomb, comma, Hestal, was
6 seen in the Wilmington Hospital student or clinic
7 services on, may return to school work on May 17th,
8 '04. Remarks: May return to work on above day. Any
9 questions please call 428-4413, and it's signed
10 (unintelligible).

11 MS. JACKSON: Yes, I do.

12 THE APPEALS REFEREE: Is that the same?

13 MS. HENDERSON: (Unintelligible).

14 THE APPEALS REFEREE: Is that the same,
15 Ms. Jackson?

16 MS. JACKSON: Yes, ma'am, it is.

17 THE APPEALS REFEREE: Okay. Any objection
18 then?

19 (Unintelligible).

20 THE APPEALS REFEREE: I'm sorry?

21 MS. HENDERSON: No objection to that.

22 THE APPEALS REFEREE: I'm going to mark
23 that note as Claimant's Exhibit Number 3.

24 MS. HENDERSON: Just the usual hearsay



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HL-039

1 objection that I would have with any --

2 THE APPEALS REFEREE: (Unintelligible) but
3 with medical, we don't, correct?

4 MS. HENDERSON: Correct.

5 THE APPEALS REFEREE: It's the only one we
6 don't do with hearsay.

7 What else do you have, Ms. Lipscomb?

8 MS. LIPSCOMB: Okay. Basically, like I
9 said, I went out. I came back and I presented them
10 with that note.

11 If I can say one thing, I went out last
12 year, and I had the same -- actually the same surgery
13 done.

14 MS. HENDERSON: Objection. That would not
15 be relevant.

16 THE APPEALS REFEREE: Well, I don't know
17 whether it is or not yet. I'll find out in a minute.

18 Go ahead.

19 MS. LIPSCOMB: The reason I brought that
20 up is that, when I went out, I actually did not have
21 to do anything at all. My supervisor handled the
22 short-term, you know, FMLE thing. She -- I'm sorry.
23 Excuse me.

24 THE APPEALS REFEREE: That's all right.



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HL-040

1 That's fine.

2 MS. LIPSCOMB: She handled all of that. I
3 was given the same kind of note, and I returned to
4 work when I was told.

5 THE APPEALS REFEREE: Okay.

6 MS. LIPSCOMB: I didn't have to -- I
7 didn't have any contact with the hospital or CIGNA
8 when I had that surgery. So, therefore, if I was
9 supposed to do this this time, I wasn't aware of it.

10 THE APPEALS REFEREE: Okay.

11 MS. LIPSCOMB: But when I was spoke to
12 about it, I did, in fact, call the hospital and try to
13 have them, you know, fax these papers over to CIGNA.

14 THE APPEALS REFEREE: What about like you
15 after? Okay. So you came back, and then at some
16 point did you have a conversation with Ms. Jackson
17 where she stressed the importance of you getting in
18 touch with your doctor and CIGNA?

19 MS. LIPSCOMB: Yes, she did. When she --
20 when she called me to her office and she asked me
21 about the paperwork, I told her that I would contact
22 the hospital. It's a little hard contacting them
23 because I always get to the nurse's messages and then
24 the -- they'll give the nurse the message and then



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HL-041

1 she'll return my phone call.

2 THE APPEALS REFEREE: Why wouldn't you go
3 to your doctor, not the hospital? Why wouldn't you
4 talk to your doctor.

5 MS. LIPSCOMB: The doctor is at Wilmington
6 Hospital, Wilmington Christiana hospital on -- on 14th
7 and Washington there.

8 THE APPEALS REFEREE: Okay.

9 MS. LIPSCOMB: I contacted them. They
10 said that they would fax the paper over.

11 This also doesn't have -- this is just a
12 copy of the fax that was refaxed to them on 6/21.
13 That paper was sent from CIGNA to the hospital, which
14 was in my chart. So they took it out of the chart and
15 they refaxed it back over to them on 6/21.

16 THE APPEALS REFEREE: Now, this does have
17 a fax thing at the top.

18 MS. LIPSCOMB: That's what was faxed to
19 them. CIGNA faxed that to the hospital.

20 THE APPEALS REFEREE: So they could
21 (unintelligible).

22 MS. LIPSCOMB: The hospital in turn took
23 it out to be faxed back to CIGNA.

24 THE APPEALS REFEREE: Okay. Let's show



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HL-042

1 this to Ms. Henderson to see if she has any objection
2 to these three pages.

3 The problem I have with this one is -- the
4 middle page is the transmittal certification because
5 it says one page plus cover, so the one page would be
6 that second page then.

7 Her testimony is that this is something
8 that she understands that the doctor sent to CIGNA.
9 Correct?

10 MS. LIPSCOMB: Yes.

11 THE APPEALS REFEREE: Okay.

12 MS. HENDERSON: All right. And it's
13 your --

14 MS. LIPSCOMB: I didn't know if -- I'm
15 sorry.

16 (Unintelligible)

17 THE APPEALS REFEREE: It's not in order
18 (unintelligible).

19 MS. HENDERSON: Right. That was my
20 concern that there's actually two pages.

21 (Unintelligible).

22 THE APPEALS REFEREE: That's the
23 transmittal. Two pages went through. The top page --

24 MS. HENDERSON: Okay.



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1 THE APPEALS REFEREE: -- and the bottom
2 page.

3 MS. HENDERSON: Okay. And you're -- the
4 purpose of this document is to show what, ma'am?

5 MS. LIPSCOMB: This is --

6 THE APPEALS REFEREE: (Unintelligible).
7 Wait. You are allowed voir dire, but that's not a
8 proper voir dire question. Okay? She's not being
9 cross-examined yet.

10 MS. HENDERSON: Okay. All right.

11 THE APPEALS REFEREE: If I have a question
12 about the purpose, I'll ask her. If you have an
13 objection as to relevancy, you can make it. Any
14 objection to this document?

15 MS. HENDERSON: Yeah. I would have.
16 Again, authenticity as well as relevance. Just as
17 with the other.

18 THE APPEALS REFEREE: Well, it's certainly
19 relevant because it -- it would show -- it shows two
20 things possibly. One is that there was some contact
21 that caused CIGNA to send this to -- apparently to the
22 hospital or to the claimant. That shows some kind of
23 contact, and then the second thing is it does show
24 that something was actually filled out by a doctor.



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HL-044

1 So I'm going to mark it as Claimant's Number 4, and
2 again, how much weight it gets will depend what I
3 conclude during my deliberation.

4 All right. What else do you want to tell
5 me, Ms. Lipscomb?

6 MS. LIPSCOMB: Okay. So basically, I did
7 try to follow up on what was requested of me by
8 Ms. Jackson to the best of my ability as far as
9 calling them and finding out and I did get a phone
10 call back saying that she did fax the paper.
11 Ms. Jackson said, well, I did not have her fax the
12 paper to the job. Well, I did state (unintelligible)
13 she said she would fax it to CIGNA because this is who
14 really needed the paperwork. And that's -- this is
15 where it was left off at.

16 THE APPEALS REFEREE: Okay.

17 MS. LIPSCOMB: And then a few days later I
18 came in. I worked a full day. And around four-thirty
19 that afternoon --

20 THE APPEALS REFEREE: When was this?

21 MS. LIPSCOMB: This was -- excuse me --
22 July 13th.

23 THE APPEALS REFEREE: Okay.

24 MS. LIPSCOMB: After I completed a full



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1 day -- day's work, approximately four-thirty, I was
2 called in to her office and notified that I was
3 terminated --

4 THE APPEALS REFEREE: Okay.

5 MS. LIPSCOMB: -- for basically not being
6 there from 4/29 to --

7 THE APPEALS REFEREE: Do you have any
8 documentation today that you were unable to work from
9 4/29 to May 17th.

10 This is -- of course, this document here
11 that's included in the last exhibit said something
12 about hospitalized 4/29, 517, and disabled.

13 MS. LIPSCOMB: (Unintelligible) left the
14 paper at home by mistake. I actually have a paper
15 that -- I had to be filled out by --

16 THE APPEALS REFEREE: Okay. Well, this
17 paper here does -- says some of that same stuff. So
18 that's okay. (Unintelligible)

19 MS. LIPSCOMB: I also had one that had to
20 be filed out by Cheryl Price. And I'm sorry. I left
21 that -- I left the --

22 THE APPEALS REFEREE: Let me see if we got
23 a copy in the file.

24 MS. LIPSCOMB: -- copy at home.



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HL-046

1 THE APPEALS REFEREE: Yeah. We got a copy
2 in the file of that.

3 MS. LIPSCOMB: Okay.

4 THE APPEALS REFEREE: So --

5 MS. LIPSCOMB: Yes. It had to be filled
6 out twice because the doctor filled it out wrong and
7 made me totally disabled and couldn't return to work.

8 (Unintelligible)

9 THE APPEALS REFEREE: Unfortunately --
10 (Unintelligible)

11 THE APPEALS REFEREE: Well, two things.

12 First --

13 (Unintelligible)

14 THE APPEALS REFEREE: Wait.

15 MS. LIPSCOMB: I'm sorry.

16 THE APPEALS REFEREE: Don't talk to her.
17 You don't talk to her. You talk to me unless I tell
18 you you can ask questions.

19 Now, the fact that you claimed it was a
20 mistake the first time, unfortunately, you're not a
21 doctor, so either none of these are going to be
22 admitted or both of them are going to be admitted. So
23 let me show them to...

24 Ms. Henderson, as far as hearsay is



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HL-047

1 concerned, we don't worry about hearsay on medical
2 certificates, especially on Department of Labor forms.

3 MS. HENDERSON: Obviously we would, just
4 as at any other time, as far as authentication,
5 relevance.

6 This goes more towards the able and
7 available issues for that time frame.

8 THE APPEALS REFEREE: It might be relevant
9 to the employer.

10 MS. HENDERSON: And it still does not --
11 the employer is not -- the employer is not challenging
12 that they were aware of when she was released to
13 return to work.

14 THE APPEALS REFEREE: Right. It's really
15 only coming in to show whether they was, according to
16 a doctor, able to work during those days. That's
17 really what it's coming in for.

18 MS. HENDERSON: We won't object to that.

19 THE APPEALS REFEREE: Okay. I'm going to
20 mark those two pages, which are both Department of
21 Labor medical doctor's certificates, will be marked as
22 Claimant's Exhibit Number 5.

23 Anything else, Ms. Lipscomb?

24 MS. LIPSCOMB: No, ma'am. Basically.



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1 THE APPEALS REFEREE: All right.

2 MS. LIPSCOMB: That was it.

3 THE APPEALS REFEREE: Okay.

4 Cross-examine.

5 MS. HENDERSON: Yes. C-4 -- I'm not sure
6 where that is.

7 THE APPEALS REFEREE: That is C-4.

8 MS. HENDERSON: Okay. Thank you, ma'am.

9 Now, this document which is the three
10 pages -- it's actually two-page fax from CIGNA to your
11 doctor dated June 21, I believe it was. The fax is
12 June 21. The actual note is May 7th up on the top
13 and --

14 THE APPEALS REFEREE: (Unintelligible) it
15 was faxed from CIGNA on May 7th.

16 MS. HENDERSON: Right. That's the
17 transmittal. Okay. And then to your physician on
18 June 21.

19 When did you become aware that this
20 document went --

21 THE APPEALS REFEREE: From the physician
22 on June 21. To the physician? From the physician.

23 MS. HENDERSON: I --

24 THE APPEALS REFEREE: Let me take a look



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1 at it.

2 MS. HENDERSON: The (unintelligible).

3 THE APPEALS REFEREE: (Unintelligible)
4 asking.

5 Who's Mary Beth (unintelligible)?

6 MS. LIPSCOMB: I believe that's the
7 doctor -- the doctor. I'm not sure who Mary Beth is.

8 THE APPEALS REFEREE: All these -- all
9 these faxes (unintelligible) Mary Beth's
10 (unintelligible).

11 (Unintelligible) 1-800.

12 MS. LIPSCOMB: That was from the hospital.

13 THE APPEALS REFEREE: To -- to CIGNA?

14 MS. LIPSCOMB: Yes. (Unintelligible).

15 THE APPEALS REFEREE: (Unintelligible).

16 All right. Wait for the question now.

17 MS. HENDERSON: All right. So this
18 document is going from the doctor to CIGNA?

19 MS. LIPSCOMB: Yes.

20 MS. HENDERSON: Right. Now, when did you
21 become aware that this document supposedly went from
22 your physician to CIGNA?

23 MS. LIPSCOMB: It was -- it was faxed on
24 the 21st to my -- to my knowledge.



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HL-050

1 MS. HENDERSON: And when did you become --
2 you obviously came here to the hearing with it. So
3 when did you become aware that this document went to
4 CIGNA from your doctor.

5 MS. LIPSCOMB: I called the hospital, and
6 I asked them could I get copies of things out of my
7 chart because I had to come to this --

8 THE APPEALS REFEREE: When? The question
9 was when.

10 MS. LIPSCOMB: September 10th, I
11 (unintelligible) I signed a release form.

12 THE APPEALS REFEREE: So you did not have
13 any evidence yourself, ma'am, up until September 10th
14 that it had been faxed to CIGNA.

15 MS. LIPSCOMB: Other than -- other than
16 what would be considered hearsay because the nurse --

17 THE APPEALS REFEREE: Telephone
18 conversation.

19 MS. LIPSCOMB: Conversation. She told me
20 that she did indeed fax --

21 THE APPEALS REFEREE: Okay. Thank you.

22 MS. HENDERSON: But my question to you
23 was, you didn't become aware that this form was faxed
24 to your -- or to CIGNA until after you were separated?



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HL-051

1 THE APPEALS REFEREE: No. No. That's not
2 what she said. Don't put words in her mouth. She
3 just said that she had a phone conversation with
4 the -- the secretary, whoever was going to fax it,
5 saying that she had faxed it.

6 MS. HENDERSON: Oh, thank --

7 THE APPEALS REFEREE: She's calling that
8 hearsay.

9 MS. HENDERSON: All right. On or about
10 what date did you become aware that this went to --

11 MS. LIPSCOMB: That would have been about
12 two -- two to three days after my termination because
13 I came -- after my -- day after my termination, I came
14 to unemployment and --

15 THE APPEALS REFEREE: Okay. Fine. You've
16 answered the question. After termination. All right.

17 MS. HENDERSON: So if I'm understanding
18 you, then, through all of these different -- you do
19 acknowledge you did have several conversations with
20 Ms. Jackson where she was repeatedly telling you that
21 they did not have the required paperwork for the STD
22 or FMLA, correct?

23 MS. LIPSCOMB: Yes.

24 MS. HENDERSON: All right. And during



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1 those various meetings prior to you being terminated,
2 you ultimately never obtained the documentation and
3 provided it to Ms. Jackson prior to being fired,
4 correct?

5 MS. LIPSCOMB: Ms. Jackson personally did
6 not request the documents. She wanted the documents
7 to go to CIGNA so that it could be processed for the
8 FMLA. I always --

9 THE APPEALS REFEREE: Try to focus on what
10 the question was. That wasn't the question I don't
11 believe.

12 MS. HENDERSON: All right. Prior to you
13 being terminated, you never provided the documentation
14 for the STD or FMLA to Ms. Jackson?

15 THE APPEALS REFEREE: (Unintelligible) you
16 did answer the question.

17 MS. LIPSCOMB: She did not request it.

18 THE APPEALS REFEREE: Hold on. Hold on.
19 I misunderstood your question. She didn't request --
20 Ms. Jackson's testimony was that she have never asked
21 for it from the claimant, so I --

22 MS. HENDERSON: What did Ms. Jackson tell
23 you to do with the paperwork?

24 MS. LIPSCOMB: Ms. Jackson said to get the



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HL-053

1 paperwork to CIGNA, that they had needed the paperwork
2 so that it could be processed.

3 THE APPEALS REFEREE: Have the doctor
4 (unintelligible).

5 MS. LIPSCOMB: Yes. To have the doctor
6 get it to them, you know, as soon as possible because
7 this -- it had to be processed.

8 MS. HENDERSON: All right. Now, does July
9 5th, July 6th sound about right as far as the last
10 time you spoke with Ms. Jackson regarding this
11 paperwork? Does that sound like that could be a
12 fair --

13 MS. LIPSCOMB: I would say so.

14 MS. HENDERSON: (Unintelligible).

15 MS. LIPSCOMB: I didn't write -- I didn't
16 write down the date because I didn't know -- I wasn't
17 aware that I was going to be terminated.

18 MS. HENDERSON: I understand. I
19 understand.

20 Now, if we were to assume that July 5th,
21 for example, is what Ms. Jackson testified her last
22 conversation with you prior to terminating you, does
23 it sound, again, accurate that Ms. Jackson would have
24 told you during that conversation that you needed to



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HL-054

1 call the vendor to make sure, meaning CIGNA, that they
2 did ultimately get the paperwork that you were all
3 hoping they would get for these leaves? Do you
4 remember her saying that as she testified?

5 MS. LIPSCOMB: No.

6 MS. HENDERSON: You don't remember her
7 saying that?

8 MS. LIPSCOMB: No, I don't.

9 MS. HENDERSON: Do you have any --

10 MS. LIPSCOMB: Only thing she said to me
11 is ask me did I get in touch with the hospital? And I
12 told her I got in touch with them, and they said that
13 they -- they had, in turn, faxed the document over to
14 CIGNA, which is the one that they faxed out on 6/21.

15 MS. HENDERSON: All right. But you don't
16 recall Ms. Jackson telling you to call the vendor
17 yourself?

18 THE APPEALS REFEREE: (Unintelligible)
19 answered. She answered.

20 MS. HENDERSON: On your own -- on your own
21 doing, did you ever make any attempts to call or try
22 to contact CIGNA directly to find out if the doctor
23 did what you requested him to do, send in the papers.

24 MS. LIPSCOMB: No, I didn't.



1 MS. HENDERSON: Okay. All right. I have
2 nothing further.

3 THE APPEALS REFEREE: Okay. Anything
4 further from the employer?

5 MS. HENDERSON: Ms. Jackson --

6 MS. JACKSON: Yes.

7 MS. HENDERSON: You've heard
8 Ms. Lipscomb's testimony, ma'am?

9 MS. JACKSON: Yes.

10 MS. HENDERSON: And I have to do this a
11 little bit differently than if you'd be sitting here
12 with me. Normally I could see your reactions a little
13 bit.

14 Do you have any rebuttal testimony?

15 THE APPEALS REFEREE: I don't think you
16 need to be that loud (unintelligible)

17 MS. HENDERSON: That you've not already
18 testified to that you wish to correct or add to for
19 the record before the Referee closes the record in
20 response to the claimant's testimony?

21 MS. JACKSON: No, I do not.

22 THE APPEALS REFEREE: Anything else
23 (unintelligible) anything else then?

24 MS. HENDERSON: No, ma'am.



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1 THE APPEALS REFEREE: Anything else,
2 Ms. Lipscomb?

3 MS. LIPSCOMB: No, ma'am.

4 THE APPEALS REFEREE: This hearing is
5 concluded. I'll issue a written decision. As I say,
6 that decision is appealable to the Unemployment
7 Insurance Appeals Board.

8 Thank you for your cooperation and
9 participation. Have a good day. Bye-bye.

10 MS. HENDERSON: Thank you.

11 (End of tape.)
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HL-057

State of Delaware)
)
County of New Castle)

C E R T I F I C A T E

I, Ann M. Calligan, Registered Merit Reporter and Notary Public, do hereby certify that the foregoing record, pages 1 to 50, inclusive, is a true and accurate transcription to the best of my ability of the tape recording of the argument in the above referenced matter.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 31st day of October, 2005, at
Wilmington.



Ann M. Calligan, RMR
(Certification No. 186-RPR)
(Expires January 31, 2008)



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